



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0052]

Hours of Service (HOS) of Drivers; Application for Renewal of American Pyrotechnics Association Exemptions From the 14-Hour Rule and the Electronic Logging Device Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of exemptions.

SUMMARY: FMCSA announces its decision to grant, in part, the application of the American Pyrotechnics Association (APA) for renewal of exemptions from certain hours of service (HOS) regulations that expired on July 8, 2020. The request is being made on behalf of 60 APA member companies. The exemptions will allow drivers for these companies to exclude off-duty and sleeper berth time of any length from the calculation of the 14-hour limit and to use paper records of duty status (RODS) in lieu of electronic logging devices (ELD) during the 2021 Independence Day period. FMCSA has analyzed the application for exemptions and the public comments and has determined that the exemptions, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemptions.

DATES: These exemptions are effective June 28 through July 8, 2021.

Docket: For access to the docket to read background documents or comments, go to www.regulations.gov at any time or visit Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is

there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets operations.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; (202) 366-4225; MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, go to www.regulations.gov, insert the docket number “FMCSA-2021-0052” in the keyword box, and click “Search.” Next, sort the results by “Posted (Newer-Older),” choose the first notice listed, click “Browse Comments.”

To view documents mentioned in this notice as being available in the docket, go to www.regulations.gov, insert the docket number “FMCSA-2021-0052” in the keyword box, click “Search,” and chose the document to review.

If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the *Federal Register* (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the

application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the *Federal Register* (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The HOS rule in 49 CFR 395.3(a)(2) prohibits the driver of a property-carrying commercial motor vehicle (CMV) from driving after the 14th hour after coming on duty following 10 consecutive hours off duty. Drivers required to prepare RODS must do so using ELDs. However, under 49 CFR 395.8(a)(1)(iii)(I), a motor carrier may allow its drivers to record their duty status manually, rather than use an ELD, if the driver is operating a CMV “[i]n a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period.”

Applicant’s Requests

APA requests temporary relief from both provisions discussed above because employees for its member companies need to drive CMVs after the end of the 14-hour period and because the proposed exemption period from June 28 through July 8 is 11 days long, which exceeds the exception from the ELD requirement (up to 8 days in a 30 consecutive-day period). APA explains that without the extra time each day provided by

the exemption from the 14-hour rule, safety would decline because APA drivers would be unable to return to their home base after each show. They would be forced to park the CMVs carrying HM 1.1G, 1.3G and 1.4G products in areas less secure than the motor carrier's home base. Without the exemption from the ELD rule, these companies would be required to purchase/lease ELD systems for a limited period of 11 days.

APA requests renewal of its HOS exemptions from the 14-hour rule for 58 of 61 member-companies included in the 2016 through 2020 waivers or exemptions and from the ELD rule for the same member companies included in the 2019 through 2020 waivers or exemptions. The HOS exemptions or waivers for 61 of its members expired on July 8, 2020. The current applications cover 58 members that previously held exemptions and 2 additional member companies not previously covered by the exemptions. APA has removed 3 member companies previously included in the 14-hour and ELD relief from the list, leaving 60 of its member companies applying for exemptions from the 14-hour rule and the ELD rule. Copies of the 2021 requests are included in the docket referenced at the beginning of this notice.

Various APA members have held waivers or exemptions during Independence Day periods from 2005 through 2014. On May 9, 2016, the current exemption for APA members was extended to July 8, 2020, pursuant to section 5206(b)(2)(A) of the Fixing America's Surface Transportation (FAST) Act. Copies of the initial request for an exemption from the 14-hour rule, subsequent renewal requests, and all public comments received may be reviewed at www.regulations.gov under docket numbers FMCSA-2005-21104 and FMCSA-2007-28043.

FMCSA granted APA's application for relief from the ELD rule on February 19, 2019, covering the Independence Day celebrations for 2019 and 2020. A copy of that request and the public comments received are located at www.regulations.gov under docket number FMCSA-2018-0140.

V. Method to Ensure an Equivalent or Greater Level of Safety

APA believes an equivalent level of safety will be achieved because the fireworks are transported over relatively short routes from distribution points to the site of the fireworks display, and normally in the morning when traffic is light. APA also believes that fatigued driving is reduced and/or eliminated because drivers spend considerable time installing, wiring, and safety-checking the fireworks displays at the site, followed by several hours off duty in the late afternoon and early evening prior to the event; during this time, the drivers are allowed to rest or take a nap. Additionally, these drivers would continue to use paper RODS in lieu of an ELD during the designated Independence Day periods. The scheduled off duty time and use of RODS will ensure that fatigued driving is managed.

VI. Public Comments

On May 4, 2021, FMCSA published notice of this application and requested public comments (86 FR 23779). The Agency received three comments, all opposing the exemptions. Miner's Inc. said "No need to extend hours of service. Team drivers can keep the load moving. This can also be used for livestock." Another commenter, John Kogelman, wrote, "14 hr. Mandatory ELD, one or the other. Truckers are not children, no safer highways [since] both rules have been in place. Too much money being allocated for enforcement, not much spent to make truck driving bearable..." The third commenter, Joshua Hilton, asked, "What part of shall not be infringed do you not understand?"

VII. FMCSA Response and Decision

FMCSA has determined that granting these exemptions to APA member-companies will likely achieve a level of safety equivalent to or greater than the level that compliance with the HOS rules would ensure. The Agency agrees with the APA that the operational demands of this unique industry minimize the risk of CMV crashes. Generally, the CMV drivers covered by the exemption transport fireworks over relatively

short routes from distribution points to the site of the fireworks display, and normally do so in the morning hours when drivers are less likely to encounter heavy traffic and congestion. When the drivers arrive at the work site, they spend most of their time setting up the fireworks displays, followed by several hours off duty in the late afternoon and early evening prior to the event. During the off-duty breaks, drivers are able to rest and nap, thereby reducing the risk of fatigue towards the end of the work shift. Before beginning another duty day, these drivers must take 10 consecutive hours off duty, the same as other CMV drivers. FMCSA notes that the individuals spend very little time driving during any given work shift and they must adhere to the weekly hours-of-service limits which prohibit operating a CMV after accumulating 60 hours on duty within 7 consecutive days, or 70 hours on duty within 8 consecutive days.

FMCSA anticipates, and understands from discussions with APA, that drivers will be unable to exceed the 14-hour limit every night and yet still have time to take 10 consecutive hours off duty. But drivers may work long days followed by short days, alternating back and forth. Such arrangements will likely vary from company to company, depending on event schedules. In any case, drivers and motor carriers operating under the exemption remain subject to the requirement for 10 consecutive hours off duty, and they must maintain records of duty status.

With regard to ELDs, the current regulations include an exception for motor carriers that are required to prepare records of duty status for 8 days or less during a 30 consecutive day period. However, the APA members in question would need relief from the requirements for 11 days. Therefore, the exemption would only provide 3 additional days of relief beyond the existing rule. The Agency does not believe safety will be decreased through the use of paper RODS and supporting documents during the 3 additional days. The carriers will be subject to the current record retention requirement, for the records generated during the timeframe of this exemption and the Agency will

have access to the RODS for 6 months from the date the records were prepared including corresponding supporting documents. The carriers also could be subject to civil penalties for failure to maintain the RODS and supporting documents for the entire period of the exemption and 6 months thereafter.

In addition, FMCSA has ensured that each motor carrier possesses an active USDOT registration, minimum required levels of insurance as required by 49 CFR part 387, and is not subject to any “imminent hazard” or other out-of-service (OOS) orders. The Agency conducted a comprehensive review of the safety performance history on each of the motor carriers listed in the appendix table during the review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies. The motor carriers have “satisfactory” safety ratings and valid Hazardous Materials Safety Permits. The member carriers may be subject to investigations prior to future renewal of the exemption.

FMCSA acknowledges the concerns of commenters and has decided to limit the exemption to the 2021 Independence Day season, rather than granting a multi-year exemption as requested by APA. The Agency will review the impact of the exemption following the 2021 Independence Day Celebration and seek public comment whether similar relief should be granted in future years, if requested by APA.

VIII. Terms and Conditions of the Exemptions

Period of the Exemption

The requested HOS exemptions from 49 CFR 395.3(a)(2) and 49 CFR 395.8(a)(1)(i) are effective from June 28 through July 8, 2021, 11:59 p.m. local time.

Terms and Conditions of the Exemptions

The exemptions are limited to drivers employed by the 58 motor carriers previously covered by the exemptions, and drivers employed by the two additional carriers

identified by an asterisk in the appendix table of this notice. Drivers covered by these exemptions will be able to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. Drivers will be able to use paper RODs in lieu of ELDs to record their HOS. The conditions of these are as follows:

- Drivers must not drive more than 11 hours after accumulating 14 hours on duty prior to beginning a new driving period;
- Drivers must have 10 consecutive hours off duty following 14 hours on duty prior to beginning a new driving period;
- Drivers must use paper RODs, maintain RODS for 6 months from the date the record is prepared, and make RODS accessible to law enforcement upon request;
- Drivers subject to the ELD requirements prior to June 28 must continue to use ELDs, maintain ELD data for 6 months from the date the electronic record is generated, and make ELD data accessible to law enforcement upon request; and
- The carriers and drivers must comply with all other requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 350-399) and Hazardous Materials Regulations (49 CFR parts 105-180).

Preemption

In accordance with 49 U.S.C. 31315(d), as implemented by 49 CFR 381.600, during the period these exemptions would be in effect, no State shall enforce any law or regulation applicable to interstate commerce that conflicts with or is inconsistent with the exemptions with respect to a firm or person operating under the exemptions. States may, but are not required to, adopt the same exemptions with respect to operations in intrastate commerce.

Notification to FMCSA

Exempt motor carriers are required to notify FMCSA within 5 business days of any accidents (as defined by 49 CFR 390.5) involving the operation of any of their CMVs

while under these exemptions. The notification must be made by email to

MCPSD@DOT.GOV and include the following information:

- a. Identifier of the Exemptions: “APA”;
- b. Date of the accident;
- c. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident;
- d. Driver’s name and driver’s license State, number, and class;
- e. Co-Driver’s name and driver’s license State, number, and class;
- f. Vehicle company number and power unit license plate State and number;
- g. Number of individuals suffering physical injury;
- h. Number of fatalities;
- i. The police-reported cause of the accident;
- j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and
- k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

In addition, if there are any injuries or fatalities, the carrier must forward the police accident report to MCPSD@DOT.GOV as soon as available.

Meera Joshi,

Deputy Administrator.

Appendix to Notice of Applications for Renewal of APA Exemptions From the

**14-Hour and ELD HOS Rules for Independence Day Periods
June 28, 2021 Through July 8, 2021 for 60 Motor Carriers**

	Motor carrier	Street address	City, state, zip code	DOT No.
1	American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
2	American Fireworks Display, LLC	105 County Route 7	McDonough, NY 13801	2115608
3	AM Pyrotechnics, LLC	2429 East 535th Rd.	Buffalo, MO 65622	1034961
4	Arthur Rozzi Pyrotechnics	6607 Red Hawk Ct.	Maineville, OH 45039	2008107
5	Artisan Pyrotechnics, Inc.	82 Grace Road	Wiggins, MS 39577	1898096
6	*Atlas Importers, Inc.	1570 S. Hwy. 501	Marion, SC 29571	449827
7	Atlas PyroVision Entertainment Group, Inc.	136 Sharon Road	Jaffrey, NH 03452	789777
8	Celebration Fireworks, Inc.	7911 7th Street	Slatington, PA 18080	1527687
9	Central States Fireworks, Inc.	18034 Kincaid Street	Athens, IL 62613	1022659
10	*Dominion Fireworks, Inc.	669 Flank Road	Petersburg, VA 23805	540485
11	Falcon Fireworks	3411 Courthouse Road	Guyton, GA 31312	1037954
12	Fireworks & Stage FX America	12650 Hwy 67S. Suite B	Lakeside, CA 92040	908304
13	Fireworks by Grucci, Inc.	20 Pinehurst Drive	Bellport, NY 11713	324490
14	Legal Aluminum King Mfg., Ltd. dba Flashing	700 E. Van Buren Street	Mitchell, IA 50461	420413

15	Gateway Fireworks Displays	P.O. Box 39327	St Louis, MO 63139	1325301
16	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
17	Hale Artificier, Inc.	3185 East US Highway 64	Lexington, NC 27292	981325
18	Hamburg Fireworks Display, Inc.	2240 Horns Mill Road SE	Lancaster, OH	395079
19	Hawaii Explosives & Pyrotechnics, Inc.	17-7850 N. Kulani Road	Mountain View, HI 96771	1375918
20	Hollywood Pyrotechnics, Inc.	1567 Antler Point	Eagan, MN 55122	1061068
21	Mike Eicher, dba Homeland Fireworks, Inc.	5235 John Day Hwy	Jamieson, OR 97909	1377525
22	International Fireworks Mfg. Company	242 Sycamore Road	Douglassville, PA 19518	385065
23	J&J Computing dba Fireworks Extravaganza	174 Route 17 North	Rochelle Park, NJ 07662	2064141
24	J&M Displays, Inc.	18064 170th Ave	Yarmouth, IA 52660	377461
25	Johnny Rockets Fireworks Display Company	3240 Love Rock	Steger, IL 60475	1263181
26	Lantis Fireworks, Inc.	130 Sodrac Dr., Box 229	N. Sioux City, SD 57049	534052
27	Las Vegas Display Fireworks, Inc.	4325 West Reno Ave.	Las Vegas, NV 89118	3060878
28	Legion Fireworks Co., Inc.	10 Legion Lane	Wappingers Falls, NY 12590	554391
29	Magic in the Sky, LLC	27002 Campbellton Road	San Antonio, TX 78264	2134163
30	Martin & Ware Inc. dba Pyro City Maine & Central Maine Pyrotechnics	P.O. Box 322	Hallowell, ME 04347	734974

31	Miand Inc. dba Planet Productions (Mad Bomber) bBoBBomberBomber)	PO Box 294, 3999 Hupp Road R31	Kingsbury, IN 46345	777176
32	Melrose Pyrotechnics, Inc.	1 Kingsbury Industrial Park	Kingsbury, IN 46345	434586
33	Montana Display Fireworks, Inc.	9480 Inspiration Road	Missoula, MT 59808	1030231
34	Pyro Shows, Inc.	115 N 1 st Street	LaFollette, TN 37766	456818
35	Pyro Shows of Alabama, Inc.	3325 Poplar Lane	Adamsville, AL 35005	2859710
36	Pyro Shows of Texas, Inc.	6601 9 Mile Azle Rd.	Fort Worth, TX 76135	2432196
37	Pyro Spectaculars, Inc.	3196 N Locust Ave	Rialto, CA 92376	029329
38	Pyro Spectaculars North, Inc.	5301 Lang Avenue	McClellan, CA 95652	1671438
39	Pyrotechnic Display, Inc.	8450 W. St. Francis Rd.	Frankfort, IL 60423	1929883
40	Pyrotecnico Fireworks Inc..	299 Wilson Rd.	New Castle, PA 16105	526749
41	Pyrotecnico FX, LLC	6965 Speedway Blvd. Suite 115	Las Vegas, NV 89115	1610728
42	Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
43	RES Specialty Pyrotechnics dba RES Pyro	21595 286th St	Belle Plaine, MN 56011	523981
44	RKM Fireworks Company	27383 May St.	Edwardsburg, MI 49112	1273436
45	Rozzi's Famous Fireworks, Inc.	118 Karl Brown Way	Loveland, OH 45140	0483686
46	Santore's World Famous Fireworks, LLC	846 Stillwater Bridge Road	Schaghticoke, NY 12154	2574135

47	Sky Wonder Pyrotechnics, LLC	3626 CR 203	Liverpool, TX 77577	1324580
48	Sorgi American Fireworks Michigan, LLC	935 Wales Ridge Rd.	Wales, MI 48027	02475727
49	Southern Sky Fireworks, LLC	6181 Denham Rd.	Sycamore, GA 31790-2603	3168056
50	Spielbauer Fireworks Co, Inc.	1976 Lane Road	Green Bay, WI 54311	046479
51	Spirit of 76, LLC	6401 West Hwy 40	Columbia, MO 65202	2138948
52	Starfire Corporation	682 Cole Road	Carrolltown, PA 15722	554645
53	Vermont Fireworks Co., dba Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South	East Montpelier, VT 05651	310632
54	Wald & Company All American Display Fireworks Company	16004 South State 291 Highway	Greenwood, MO 64034	87079
55	Western Display Fireworks, Ltd.	10946 S. New Era Rd.	Canby, OR 97013	498941
56	Western Enterprises, Inc.	13513 W. Carrier Rd.	Carrier, OK 73727	203517
57	Wolverine Fireworks Display, Inc	205 W Seidlers	Kawkawlin, MI	376857
58	Young Explosives Corp.	2165 New Michigan Rd.	Canandaigua, NY 14618	450304
59	Zambelli Fireworks MFG, Co., Inc.	120 Marshall Drive	Warrendale, PA 15086	033167
60	ZY Pyrotechnics, LLC dba Skyshooter Displays, Inc.	1014 Slocum Road	Wapwallopen, PA 18660	2149202